

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 21-cr-20234

Hon. STEPHANIE DAWKINS DAVIS

vs.

BRANDON MARCUS KAIN,

Defendant.

TIMOTHY M. TURKELSON
Assistant United States Attorney
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SANFORD A. SCHULMAN
Attorney for Defendant
BRANDON MARCUS KAIN
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DEFENDANT, BRANDON MARCUS KAIN'S UNOPPOSED
MOTION REQUESTING A MENTAL COMPETENCY
EVALUATION PURSUANT TO 18 U.S.C. §§ 4241 AND TO APPOINT
EXPERT

NOW COMES the Defendant, BRANDON MARCUS KAIN, by and
through his attorney, SANFORD A. SCHULMAN and states in support of

his motion requesting a mental competency evaluation pursuant to 18 U.S.C. §§ 4241 and that such examination be conducted in accordance with 18 USCS § 4247 and to appoint Dr. Jeffrey Wendt, PhD to conduct said examination as follows:

1. The Defendant, BRANDON MARCUS KAIN, is charged in a one count indictment with Unlawfully attempting to damage or destroy by explosive device a building used in interstate commerce. (R. 1, Indictment, PgID 1-3).

2. Brandon Kain has been held in custody since his arrest and is currently in the Sanilac County Jail in Sandusky, Michigan.

3. That it is alleged on August 3, 2020 at approximately 2:30 p.m. the Genesee County Central Dispatch received a 9-1-1 call from an individual in Montrose Township who allegedly fired shots and threw an incendiary device into a residence. The witnesses described individual as having come from across the river, acting erratic and dressed in a clown suit.

4. BRANDON KAIN was later arrested and charged with the pending case. He has a history of mental health issues, was under the care of a psychiatrist and is suffering from various psychological problems for which he is taking medication.

6. The allegations and the mental health history support a referral for an evaluation and recommendation regarding competency and criminal responsibility.

7. Defense counsel is therefore requesting a mental competency evaluation pursuant to 18 U.S.C. §§ 4241 and that such examination be conducted in accordance with 18 USCS § 4247.

8. On June 1, 2021 the defense hired Dr. Gerald Shiener to conduct an evaluation and prepare a recommendation. Unfortunately, Dr. Shiener has been unable to conduct that evaluation and has not been responsive to inquiries. The family does not have the resources to retain an expert.

9. Dr. Jeffrey Wendt, PhD has indicated he is willing to accept the appointment as an expert, to conduct the evaluation and prepare a report and recommendation and to be compensated in accordance with the rates set by the Criminal Justice Act (CJA).

10. Timothy Turkelson, the assistant United States Attorney, has indicated he does not oppose this motion.

11. The defendant stipulates that any delays or continuances of that may occur as a result of the need for additional time to conduct and complete the defense requested evaluation and the October 26, 2021 trial date qualifies as excludable delay under the Speedy Trial Act, 18 U.S.C. §

3161(h)(7), because the ends of justice served by the granting of the this continuance outweigh the best interests of the public and the defendant in a speedy trial. The parties' reasons for the continuance and for a finding of excludable delay is the need to conduct and complete the psychological evaluation and to allow the parties time to then explore a possible resolution.

WHEREFORE, Sanford A. Schulman, as counsel for the defendant, BRANDON MARCUS KAIN, respectfully requests this Honorable Court refer the issue of competency for an investigation and recommendation pursuant to 18 U.S.C. §§ 4241 and that such examination be conducted in accordance with 18 USCS § 4247 and that Dr. JEFFERY WENDT be appointed for that purpose and compensated in accordance with the rates set by the Criminal Justice Act for the reasons so stated herein.

Respectfully submitted,

/s/ Sanford A. Schulman
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Date: September 2, 2021

UNITED STATES DISTRICT COURT
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UNITED STATES OF AMERICA,

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**BRIEF IN SUPPORT OF DEFENDANT, BRANDON MARCUS
KAIN'S UNOPPOSED MOTION REQUESTING A MENTAL
COMPETENCY EVALUATION PURSUANT TO 18 U.S.C. §§ 4241
AND TO APPOINT EXPERT**

NOW COMES the Defendant, BRANDON MARCUS KAIN, by and through his attorney, SANFORD A. SCHULMAN and states in support of his motion requesting a mental competency evaluation pursuant to 18 U.S.C. §§ 4241 and that such examination be conducted in accordance with 18 USCS § 4247 and to appoint Dr. Jeffrey Wendt, PhD to conduct said examination as follows:

STATEMENT OF FACTS

.The allegations in the pending case and the mental health history of the defendant support the entry of an order referring the issue of competency and criminal responsibility for an evaluation and recommendation. The defense is requesting the appointment of Dr. Jeffrey Wendt, PhD who is qualified to conduct such examination.

The defendant understands and agrees that any delays or continuances of the October 26, 2021 trial day that may occur as a result of the need for additional time to conduct and compete the defense requested evaluation qualifies as excludable delay under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7), because the ends of justice served by the granting of this continuance outweigh the best interests of the public and the defendant in a speedy trial. The parties' reasons for the continuance and for a finding of

excludable delay is the need to conduct and complete the psychological evaluation and to allow the parties time to then explore a possible resolution.

ARGUMENT

At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, or at any time after the commencement of probation or supervised release and prior to the completion of the sentence, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense. 18 U.S.C. §§ 4241

A district court should grant such a hearing if there is "reasonable cause to believe" the defendant is mentally incompetent. [**6] 18 U.S.C. § 4241(a). We review a district court's "reasonable cause" determination for abuse of discretion. *United States v. Jones*, 495 F.3d 274, 277 (6th Cir. 2007).

In the case at bar, BRANDON MARCUS KAIN has a history of mental health issues and a report and recommendation is warranted to assist the court and the parties. Such conduct justifies a referral for a licensed therapist and expert to evaluate him and provide a report and recommendation regarding his competency to proceed and criminal responsibility. Timothy Turkelson, the assistant United States Attorney, has indicated he does not oppose this motion.

WHEREFORE, Sanford A. Schulman, as counsel for the defendant, BRANDON MARCUS KAIN, respectfully requests this Honorable Court refer the issue of competency for an investigation and recommendation pursuant to 18 U.S.C. §§ 4241 and that such examination be conducted in accordance with 18 USCS § 4247 and that Dr. JEFFERY WENDT be appointed for that purpose and compensated in accordance with the rates set by the Criminal Justice Act for the reasons so stated herein.

Respectfully submitted,

/s/ Sanford A. Schulman
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Date: September 2, 2021